

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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SEP 16 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of)

Implementation of Section)
309(j) of the Communications)
Act - Competitive Bidding)
Narrowband PCS)

PP Docket No. 93-253

Amendment of the Commission's)
Rules to Establish New)
Narrowband Personal)
Communications Services)

GEN Docket No. 90-314/
ET Docket No. 92-100

To: The Commission

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COMMENTS OF PAGEMART, INC.

Phillip L. Spector
Susan E. Ryan
Jon C. Garcia
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
1615 L Street, N.W.
Washington, D.C. 20036
Telephone: (202) 223-7300
Facsimile: (202) 223-7420

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SUMMARY

PageMart urges the Commission to fashion competitive bidding rules for the BTA and MTA auctions that fairly balance the needs of all industry participants. PageMart offers four specific proposals in response to the Commission's request for comments.

First, the Commission should designate as entrepreneurs' blocks only those licenses for channels that already carry a designated entity bidding credit. Setting aside two additional licenses would cause undue hardship for medium-sized, existing paging firms such as PageMart, because these companies would be unable to compete against larger firms for the limited number of licenses that remained outside the entrepreneurs' blocks.

Second, to the extent that the Commission decides to set aside certain spectrum licenses for designated entity-only bidding, it should also aggregate the remaining BTA and MTA licenses or permit combinatorial bidding on those licenses. The original rationale for creating the BTA and MTA service areas was to provide opportunities for smaller firms. However, the creation of entrepreneurs' blocks satisfies this need. Companies bidding on the non-entrepreneur block licenses will be larger firms, interested in providing service on a regional or national basis. Requiring these firms to assemble such service areas out

of BTA and MTA licenses would be unfair, inefficient, and would delay service to the public.

Third, the Commission should not allocate to the proposed entrepreneurs' blocks any of the 12.5 kHz, unpaired response channels. These response channels originally were intended to permit existing paging companies to upgrade their current networks to provide two-way advanced messaging services. This opportunity was provided by the Commission in recognition of the significant investment by incumbent paging firms as well as their substantial network experience. Moving any of the response channels into the entrepreneurs' blocks would constitute a major reversal of Commission policy and would unfairly disadvantage existing paging firms, which would be forced to compete for a handful of much-needed, return-link spectrum licenses.

Finally, aggregation of some of the response channels into larger service areas would assist existing paging firms in upgrading their networks. The majority of these firms seek to provide regional or nationwide service. Forcing them to assemble a regional or nationwide set of response channel licenses on an MTA-by-MTA basis would be unnecessarily cumbersome and could result in the delay of service to the public. Aggregation of the

MTA response channels into regional or national licenses would alleviate this problem.

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To: The Commission

COMMENTS OF PAGEMART, INC.

PageMart, Inc. ("PageMart"), by its attorneys,
hereby responds to the Further Notice of Proposed Rulemaking
("FNPRM") issued in the above-captioned proceeding.^{1/}

PageMart is a medium-sized, innovative paging company that
provides low-cost, nationwide services. PageMart utilizes
existing private carrier paging channels and intends to pair
such channels with narrowband personal communications
service ("PCS") response channels in order to offer advanced
paging services to the public. PageMart was the high bidder

^{1/} FCC 94-219, released August 17, 1994.

for a 50 kHz unpaired license at the auctions of nationwide narrowband PCS licenses held in July 1994.

In this proceeding, the Commission requests comment on a range of proposals regarding the award of narrowband PCS licenses currently designated for the BTA and MTA service areas. PageMart urges the Commission to consider the following four proposals regarding the award of these licenses:

1. THE COMMISSION SHOULD DESIGNATE AS ENTREPRENEURS' BLOCKS ONLY THOSE CHANNELS THAT ALREADY INCLUDE A BIDDING CREDIT FOR DESIGNATED ENTITIES.

PageMart applauds the Commission's efforts to fulfill its statutory mandate to provide adequate opportunities in PCS for certain designated entities. This is a difficult task because -- as the Commission has acknowledged -- providing opportunities for designated entities must be balanced with the needs of other entities.^{2/} PageMart supports the Commission's proposal to create "entrepreneurs' blocks" for bidding by minority- or women-owned entities and smaller firms. As the Commission has pointed out, the results of the nationwide narrowband

^{2/} See FNPRM ¶ 84.

auctions demonstrate that bidding credits alone cannot ensure participation by designated entities in PCS. The Commission's plan to set aside certain channels exclusively for bidding by designated entities will assure more favorable results.

In its efforts to assist designated entities, however, the Commission should not penalize medium-sized firms, like PageMart, that have committed substantial resources to the development of this industry. Although firms like PageMart cannot qualify as entrepreneurs, they also lack the deep pockets that permit unlimited bidding. By being caught in the middle -- between the deep pockets and the designated entities -- these firms risk being shut out of the bidding entirely.

Medium-sized firms would suffer a particular hardship if the Commission were to set aside additional licenses for the entrepreneurs' blocks beyond those that were originally designated for bidding credits. To understand this point, it is important to appreciate the overall availability of licenses and the financial realities that prevail among would-be narrowband PCS providers. As the regional auctions will undoubtedly show, there remains

significant demand among the largest telecommunications firms for narrowband PCS licenses.^{3/} Specifically, it is expected that each RBOC will seek to acquire at least one 50 x 50 kHz regional license for its local service area. Because there are only two 50 x 50 kHz licenses per region, including one that carries a 40% bidding credit for designated entities, it is unlikely that medium-sized companies like PageMart will be successful in acquiring any of these licenses.^{4/}

Moreover, it is improbable that the RBOCs, along with other major players, will be completely satisfied with a 50 x 50 kHz license alone. Instead, given their comparative financial muscle, several will also likely seek 50 x 12.5 kHz regional licenses. Again, one of these

^{3/} For example, because only one of the Regional Bell Operating Companies ("RBOCs") was successful in winning a nationwide narrowband license at the July auction, it is widely expected that these entities will be very active in the regional bidding.

^{4/} Minority or women-owned firms with substantial assets (or debt financing) will be eligible for the sizeable (40%) bidding credit, providing them with a substantial advantage in the bidding. The Commission's proposed entrepreneurs' blocks recognize the illogic of providing bidding credits to women- or minority-owned firms that are controlled by wealthy individuals. However, the regional auction process will not benefit from this wisdom.

licenses carries a 40% designated entity bidding credit. There are only three other 50 x 12.5 kHz licenses in each region, meaning that medium-sized companies could easily be squeezed out of the regional competition altogether.^{5/}

If medium-sized firms like PageMart are outbid at the regional auctions by the larger firms and the designated entities, they will be forced to look to the BTA/MTA auction as a last chance to assemble regional or nationwide service networks.^{6/} Under this scenario, the Commission's proposed set-aside of two additional frequency blocks for designated entities would be devastating, because it leaves only one 50 x 12.5 kHz license for non-entrepreneurs.^{7/} PageMart's

^{5/} At a minimum, companies like PageMart will suffer most from the inflated prices created by the spectrum set-aside, prices that could be even higher in the event that the Commission increases the number of licenses designated for entrepreneurs.

^{6/} This "cascading down" phenomenon was apparent at the nationwide auction, in which a number of bidders stayed active on the larger channels until the bids grew too high.

^{7/} Contrary to the Commission's assertion in the FNPRM, it is of little comfort that the 12.5 kHz unpaired response channels remain available. See FNPRM ¶ 84 n. 121. As is explained later in these comments, changes to the eligibility rules for the response channels, the small geographic size of the licenses, and the possibility that some of the channels may be moved into (continued...)

proposal, which would limit the channels set-aside for the entrepreneurs' blocks to the four channels previously identified for bidding credits, offers a more balanced approach (three 50 x 12.5 kHz licenses available for all bidders) that still provides for significant, guaranteed participation by designated entities.

A plan that harms innovative, dynamic, medium-sized companies like PageMart, while permitting industry behemoths like the RBOCs to obtain licenses, cannot serve the public interest. Rather, as the Commission correctly observes in the FNPRM, its statutory directive requires that the auction rules promote "economic opportunity and competition by disseminating licenses among a wide variety of providers."^{8/} The Commission would fall short of this

^{2/} (...continued)

the entrepreneurs' blocks all undermine the appeal of this alternative.

Likewise, the availability of channel 18 (an MTA-sized 50 x 50 kHz license) and channel 23 (an MTA-sized 50 kHz unpaired license) is little consolation. Because channel 18 will be the only large, paired channel, outside the entrepreneurs' blocks, demand for this frequency will be quite strong. Channel 23 is far less attractive, especially to existing paging companies (which constitute the bulk of mid-sized players), because it is an unpaired, forward channel.

^{8/} FNPRM at ¶ 70. See also 47 U.S.C. § 309(j)(3)(B).

directive if it were to adopt rules that left too few licenses open for bidding by non-entrepreneurs.

2. THE COMMISSION SHOULD CREATE LARGER SERVICE AREAS FOR THE NON-ENTREPRENEUR BLOCK LICENSES.

A. The Rationale For Larger Service Areas.

Because the proposed entrepreneurs' blocks will guarantee smaller companies access to spectrum, there is little reason for the Commission to retain the BTA- and MTA-sized licenses. By definition, the firms that qualify to bid in the entrepreneurs' blocks will be the very same entities that the Commission sought to assist when it established these smaller service areas in its original channelization plan.^{2/} Thus, the companies bidding on the

^{2/} Rather than adopting exclusively larger service areas, the Commission noted in its First Report and Order, that "providing channels at the local level ... will foster broader participation in narrowband PCS, allow entry by smaller firms and businesses, increase competition and promote diversity in the provision of narrowband PCS services." Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, First Report and Order, GEN Docket No. 90-314, ET Docket No. 92-100, FCC 93-329 (released July 23, 1993) ¶ 27 (hereinafter, "First Report and Order"). With respect to the MTA licenses, the Commission originally conceived of these service areas as being "non-local", but later revisited the license size issue and acknowledged that regional service (not service at the MTA level) was actually the smallest size service contemplated by larger firms.
(continued...)

remaining non-entrepreneur block channels will be larger firms, interested in providing service on a regional or national level, rather than at the BTA or MTA level.^{10/}

This interest in wide-area service coverage is a function of the changing nature of the paging industry. As numerous commenters in the narrowband PCS allocation docket have already noted, paging is rapidly transforming itself from a local business to a regional and nationwide industry.^{11/} Whereas five years ago there was effectively

^{9/} (...continued)

See Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, Memorandum Opinion and Order, GEN Docket No. 90-314, ET Docket No. 92-100, FCC 94-30 (released March 4, 1994) ¶¶ 7-14.

^{10/} The number of firms that cannot qualify as entrepreneurs but that wish to offer BTA- or MTA-level service is extremely small. Moreover, such firms would also have the option of reselling other carriers' service on a BTA or MTA basis.

If the Commission still finds a need to reserve some local service areas for non-entrepreneurs, it should retain only channel 25 as a BTA-sized license.

^{11/} See, e.g., Comments of Metrocall of Delaware, Inc. at 25 (filed Nov. 9, 1994); Comments of MTel at 14 (filed Nov. 9, 1994); Comments of Motorola, Inc. at 21 (filed Nov. 9, 1994); Comments of PageNet at 9 (filed Nov. 9, 1994); Comments of Telocator, at 10-11 (filed Nov. 9, 1994); Comments of American Paging, Inc. at 5 (filed Nov. 9, 1994).

only one facilities-based nationwide service provider, there are now several. Moreover, PageMart's internal estimates put the current number of regional/nationwide subscribers of the several largest paging companies at 720,000, up from only 130,000 in 1990. This trend to regional and nationwide service offerings also is advanced by manufacturers, which cannot support a diversity of services without adequate product sales -- typically requiring at least a regional market. Finally, service providers cannot achieve the necessary economies of scale to offer advanced paging with local service alone.^{12/}

Under these circumstances, retaining the non-entrepreneur block BTA- and MTA-sized licenses will result in unnecessary inefficiencies.^{13/} The companies bidding

^{12/} Even "local service" is evolving into city-by-city service, meaning that subscribers are offered a choice of different cities -- perhaps spread out across the country -- in which their pagers will operate.

^{13/} The most obvious, and potentially distorting, inefficiency relates to the "hold out" problem that may occur if bidders are forced to assemble regional or nationwide service networks on a license-by-license basis. An entity that does not value a given license because of the opportunity to provide service in that market may nonetheless enter a high bid so as to "greenmail" another firm that is seeking to assemble a regional or nationwide network of licenses.

for these licenses will be overwhelmingly interested in larger service areas. The creation of regional and/or nationwide licenses would alleviate burdensome after-market aggregation problems, prevent strategic bidding, encourage economies of scale, and speed service deployment.

Larger service areas also offer the advantage of increasing competition at the regional and national level. The nationwide narrowband PCS auctions were dominated by a handful of firms, especially with respect to the paired channels, which are important for providing advanced paging services.^{14/} Absent from the list of successful bidders for paired channels were mid-sized companies like PageMart, which currently compete in the one-way paging market at a national level with the largest paging firms. If this kind of competition is to continue into the next generation of paging services, the Commission must make regional and nationwide licenses more easily attainable by firms like PageMart, that are unable to qualify as entrepreneurs, but which also lack deep pockets.

^{14/} Two companies of RBOC heritage (AirTouch and BellSouth Wireless), two of the largest existing paging companies (PageNet and MTel), and industry giant McCaw (KDM Messaging Company) captured all of the paired licenses.

B. Larger License Areas Can Be Created Either Through Reallocation Or Combinatorial Bidding.

PageMart urges the Commission to eliminate the inefficiencies inherent in retaining the non-entrepreneur block BTA- and MTA-sized licenses by either: (a) aggregating these licenses into regional or national licenses (or some combination thereof); or (b) allowing companies to utilize combinatorial bidding for these licenses.^{15/} In the event that the Commission selects the latter alternative, PageMart suggests that parties be permitted to submit combinatorial bids only upon licenses that constitute a narrowband PCS service region, as currently defined by the Commission.^{16/}

^{15/} Congress directed the Commission to experiment with different auction methodologies. See 47 U.S.C. § 390(j)(3). Combinatorial bidding was advocated by a number of parties in the original auctions rulemaking. See, e.g., Comments of Cellular Telecommunications Industry Association, PP Docket No. 93-253 (November 10, 1993). The narrowband BTA/MTA auction offers a superb opportunity for the Commission to demonstrate the benefits of this auction procedure.

^{16/} See Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, Memorandum Opinion and Order, GEN Docket No. 90-314, ET Docket No. 92-100, FCC 93-329 (released March 4, 1994) ¶ 14 (hereinafter, "Narrowband Reconsideration Order").

PageMart also urges the Commission not to require a premium when comparing combinatorial bids to individual bids. The rationale for requiring a combinatorial premium is the free-rider problem. This problem generally arises, however, when there are bidders, interested in the individual licenses, which must compete against combinatorial bidders. As PageMart has explained, in this case, where the bidding pool consists of non-entrepreneurs, the interest in individual BTA and MTA licenses will be nearly non-existent.^{17/} Because all parties will be attempting to assemble combinations of licenses, no party will rationally rely upon the size of another party's bid to beat the combinatorial submission. Thus, the free-rider problem, and the rationale for charging a premium for combinatorial bidding, is largely eliminated.

3. NO RESPONSE CHANNELS SHOULD BE MOVED INTO THE ENTREPRENEURS' BLOCKS.

The 12.5 kHz response channels originally were allocated in order to enable existing paging companies to

^{17/} This is excepting, of course, bidders that could seek out individual licenses in an attempt to "greenmail" those parties assembling a regional or national license. The Commission should not facilitate this anti-competitive behavior with its bidding rules.

provide advanced paging services in conjunction with their current spectrum.^{18/} This was a critical decision by the Commission, because it gave incumbent paging firms -- with their substantial infrastructures , network expertise, and experience -- an opportunity to compete with new narrowband PCS providers.

Recently, the Commission expanded significantly the number of firms eligible to bid on the response channels.^{19/} The practical effect of this expansion will be to heighten competition for response channels and make it more difficult for firms such as PageMart to acquire return-link spectrum.

The FNPRM proposes an additional modification to the response channels: moving "some" of these frequencies into the entrepreneurs' blocks. PageMart urges the Commission to reconsider this proposal. Placing some of the response channels in the entrepreneurs' blocks will heighten the already stiff competition among incumbent paging firms

^{18/} See First Report and Order ¶ 20.

^{19/} See Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, Second Memorandum Opinion and Order, GEN Docket No. 90-314, ET Docket No. 92-100, FCC 94-218 (released August 25, 1994).

to acquire the response channel spectrum. This would be an unfortunate development because existing paging companies such as PageMart have invested significant resources in the development and construction of paging systems. These firms have been critical to the rapid provision and expansion of services to the public, and are responsible for the dynamic growth and competitive atmosphere of the paging industry. The Commission's proposal to include response channels in the entrepreneurs' blocks would have the inequitable effect of making it more difficult for these firms to compete in the advanced paging market, and would lessen innovation and efficient spectrum usage.

Assignment of some of the response channels to the entrepreneurs' blocks would also undermine part of the rationale advanced by the Commission for the set-aside of the paired MTA and BTA licenses. In the FNPRM, the Commission argues that the adverse effects of creating entrepreneurs' blocks for certain of the paired MTA and BTA licenses are mitigated because incumbent paging licensees would still "have the opportunity to bid on 2,176 MTA and BTA response channel licenses reserved for existing paging

licensees."^{20/} By moving some of these response channels into the entrepreneurs' blocks, the Commission would take away with one hand what it purports to give with the other.

4. SOME OF THE RESPONSE CHANNELS SHOULD BE REDESIGNATED FOR LARGER SERVICE AREAS.

Although some small paging firms may seek to acquire the 12.5 kHz response channels, interest will be concentrated among the larger firms because these are the companies that will seek to offer service competitive with new narrowband PCS.^{21/} As is explained above, these larger firms are interested in regional and nationwide service, rather than local operations.

Forcing companies that wish to offer regional or national service to painstakingly assemble their license network by accumulating each necessary BTA or MTA, one-by-one, seems unreasonable. Instead, PageMart encourages the Commission to acknowledge market realities and aggregate the MTA-sized response channel licenses into larger service areas. By leaving the BTA-sized response channels intact,

^{20/} See FNPRM ¶ 84 n.121.

^{21/} High infrastructure costs, the need for manufacturer support, and the changing demands of consumers will all make the provision of advanced paging services an industry dominated by larger players.

this middle road approach would balance the needs of all potential bidders, both large and small, ensuring that the latter have access to response channel spectrum and that the former are not burdened by the inefficiencies inherent in a system that requires assembly of a larger network of licenses.^{22/}

CONCLUSION

In considering its proposals to modify the rules governing award of the BTA and MTA narrowband spectrum licenses, PageMart urges the Commission to remain mindful of the interests of all parties concerned, including those medium-sized firms like PageMart. Doing so will encourage competition in the emerging narrowband PCS market and ensure rapid delivery of service to the public.

Regarding the paired BTA and MTA licenses, the Commission should limit its entrepreneurs' block set aside to those licenses already designated for a bidding credit. This will avoid unnecessary harm to medium-sized companies like PageMart, while still providing generous opportunities for designated entities. Outside the entrepreneurs' blocks,

^{22/} These are essentially the same inefficiencies discussed in Section 2(A) above.

the Commission should recognize the clear trend among non-entrepreneurial paging companies toward regional and nationwide service, and should either redesignate these licenses for larger service areas or permit combinatorial bidding.


With regard to the treatment of the unpaired, 12.5 kHz response channels, PageMart encourages the Commission to keep all of these channels outside of the entrepreneurs' blocks. Because these frequencies were allocated to provide incumbent paging companies -- not newcomers to the industry or entrepreneurs -- an opportunity to compete in the provision of advanced paging services, it would be inequitable to relocate any of these channels into the entrepreneurs' blocks. Finally, the Commission should aggregate the MTA-sized licenses into regional or national

licenses so that existing paging companies can more easily acquire the response channels that would allow them to enhance their service to the public.

Respectfully submitted,

PAGEMART, INC.

BY:



Phillip L. Spector
Susan E. Ryan
Jon C. Garcia

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
1615 L Street, NW Suite 1300
Washington, DC 20036-5694
Telephone: 202-223-7340
Facsimile: 202-223-7420

Its Attorneys

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